The Transgender Community of Kashmir: A socio-legal Analysis

PhD Synopsis

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1. Introduction

Gender is one of the most pivotal characteristics of our society around which the rights of an individual revolve. A baby is born and the doctors or midwives rush to see the genitalia to make that momentary announcement whether the baby is a boy or a girl. The sex is determined at the time of conception by the presence of chromosomes XX in case of girls and XY in case of boys. Gender on the other hand is determined for the most part by the society. Girls are expected to be soft, gentle, dependent and nurturing. Boys on the other hand are expected to be assertive, independent and aggressive. There are many explanations or theories given by theorists to support this norm of expected behaviour.[1] One of the theories stated in support of this is the evolutionary theory. As per this theory, in primal times a man had to go for hunting and gather food while as women had to give birth to and rear children as women alone had the natural biological capacity to rear children. Thus the whole idea of gender roles. There are however many arguments against this theory.

Firstly, this theory is negated by the argument that the present times do not call for the primitive means of survival. Secondly, gender variation was more than the evolutionary psychologists have cared to acknowledge. This argument is supported by the study conducted by **Margaret Mead in 1935** who found three tribes in New Guinea where the roles of gender were not based on binary perception of gender and sex namely the **Arapesh**, the Mundugumor and the Tchambuli.[2] These role of gender in Arapesh tribes are what would in today's times be called **feminine** or matriarchal while as in **Tchambuli** gender roles are **masculine** for both. So, it can be said that the way we perceive gender roles is an artificial construct that comes right from family carries onto schools, peer groups and even the mass media is seen propagating the binary understanding of gender.

Religion is another source of gender binary concept that has a very deep and pervasive role in deepening the gender divide as specifically male or female. Another important aspect of our gender identity though not the same as gender is the concept of sexual orientation. Although two distinct concepts they often get overlapped. Gender on one hand is the perception of self and sexual orientation is an interpersonal idea of whom we get sexually attracted to. [3]In all this

[1] David. P. Barash, *Natural Selections: Selfish Altruists, Honest Liars and Other Realities of Evolution* 205-06 (NY: Bellevue Literary Press, 2007).
[2] Libraries, *Understanding sex and gender*, University of Minnesota, (Nov, 12, 2020, 10 AM), https://open.lib.umn.edu/sociology/chapter/11-1-understanding-sex-and-gender/.
[3] Gender spectrum, *Understanding gender*, GENDER SPECTRUM, (Nov 2, 2020, 7 PM) https://genderspectrum.org/articles/understanding-gender.

hullabaloo of sex, gender roles and sexual orientation lies a concept and identity that is most prone to misunderstanding i.e., the transgender. Transgender people can be defined as someone who do not confirm with the sex assigned to them at the time of birth. For e.g., a person who is assigned male sex at birth but identifies as a female or vice –versa. Thus, transgender can identify as woman, man, both or neither of the two.[4]

2. Historical Background

The word transgender was first used by **Dr. Olivia in 1965** as a synonym for transsexual to define any person in whom there is a strong urge to change the gender or sex assigned to them by the society. Dr. Olivia mixed the two identities i.e., transgender and transsexual. This misunderstanding was clarified by the **Virginia Prince** a trans writer who used the word '**transgenderal'** to distinguish herself form transsexual i.e., those who underwent surgery to transition. She clarified that there is a difference between sex and gender. **In 1969** itself **gay rights movement** was started by the **Stonewall Riots**. The first ever **transsexual Conference was held in 1974** in the **University of Leeds.**

By 1990s, the LGBTQ+ began embracing transgender as an umbrella term. **Trans** therefore, is now considered to be a word of **Latin origin** meaning across as opposed to **cis** which means **in the same side.** Thus, denoting a term used for something that is not on the same side as the sex assigned to the person at the time of birth.[5]The existence of transgender is not new. History is replete with examples of transsexuals being not only a part of the society but an accepted one at that. In ancient times, in almost all societies, **transgender people were considered to have a unique wisdom.**

It was only when the societies transformed from the **matrilineal to the patriarchal** one that the transgender people were seen as a threat to the gender binary concept that had till then seeped in and considered to be a very important aspect of a patriarchal society.[6]Be it Europe, Middle East, North America or Africa, there are in numerous instances of transgender being an important part of the society. For e.g., **in Europe and Greece transgender people served as priestesses in the temples of Artemis, Hecate¸ Diana, Heracles, Athena, Dionysus etc. even the god of love, Cupid was originally portrayed as intersex.**

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[4] Mere Abrams, *Is there a difference in being a transgender or transsexual person?* HEALTHLINE, (Nov, 21, 2019, 2 PM), https://www.healthline.com/health/transgender/difference-between-ttranssexualransgender-and-.

[5] By them. *InQueery: What does the word "transgender" mean?* THEM, (Sep 7, 2018, 8 PM), https://www.them.us/story/inqueery-transgender.

[6] Tapati Sinha., *A historical perspective of transgender, a different community,* DIFFERENT TRUTHS, (March 4, 2018), https://www.differenttruths.com/travel-getaways/history-culture/a-historical-perspective-of-transgender-a-different-community/.

In the **Roman civilisation**, the **'Great Mother'** was a god who was shown as intersex from whom the different **sexes had not yet split**. In another instance, **King Ashurbanipal of Assyria** used to wear women's clothing. **The Egyptian queen of Hapshetput** donned male clothing. She had a daughter, Neferure who was dressed in a similar fashion. In India, the transgender people are known by different names like **Hijras, Eunuchs, Kothis, Aravanis, Jogappas, Shiv-shaktis** etc. Eunuch as a word is being used since the 9th century. It means **"the keeper of bed"** as eunuchs were kept as guards for the royal women.

The Vedas also divided individual into **three separate categories** as per their **'prakriti'** in which transgender were called the **tritiya- prakriti.** There is a mention of transgender in the Kama Sutra as well. The **Manu Smriti** describes the origin of the three sexes as- **when there is a greater quantity of male seed, the male child is produced, when there is a greater quantity of female seed, the female child is produced and when there is the equal quantity of the female and the male seed, then the third sex is produced**.[7] The **Puranic literature** had a mention of the word **'napumsaka'** meaning a person who **does not have the ability to procreate**. The Jain texts also had the concept of 'psychological sex' denoting that perception of gender can be different from the sexual characteristics.

Another anecdote that shows the existence of Hijras or third gender in ancient times is that when Lord Rama was leaving to forest after being banished from the Kingdom for 14 years, Lord Rama asked the men and women amongst their followers to stay back. Hijras considered it as an order to follow Lord Rama into the forest and seeing this sense of loyalty Lord Rama blessed the 'Hijra' community that they will get the opportunity to bless people on child birth, marriage and inauguration.[8] Another such story is from the Mahabharata in which Aravana the son of Arjuna and Nagakanya was to be sacrificed before the Goddess Kali to ensure the victory of Pandavas. For this, he was to spend one night in marriage first. Since, there was no woman willing to come forward to marry him, Krishna took the form of a woman and presented himself as **Mohini** and married **Aravana.**

The transgender people of Tamil Nadu call themselves as Aravanas as thy consider themselves to be the children of Aravana. Next important phase of transgender in India was the Mughal period. The Hijras frequently refer to their role in the Mughal period and the Ottoman Empire

[7] Preeti Sharma, *Historical Background and Legal Status third gender in Indian society*, 2 (12), IJRESS69, 64-72 (2012).

[8] Tahmina Habib, *A Long Journey towards Social Inclusion: Initiatives of Social Workers for Hijra Population in Bangladesh*, University of Gothenburg International Master's Programme in Social Work and Human Rights, 8, 6-75 (2012).

to lay emphasis on their importance as political advisors, administrators, and guards of Harems and the guards of Mecca as they were considered to be clever, trustworthy and loyal. The ostracisation of transgender started with the advent of colonial rule. Hitherto transgender had good repute in the society and enjoyed monetary benefits from the local community. British however were disgusted at the sight of the transgender and found their mimicking the mannerisms of women as repulsive of the idea of masculinity that they were used to back home. To keep a check on the activities of the transgender community and to stop them from expressing themselves they made cross dressing punishable under the **Criminal Tribes Act, 1871**.

Under this Act, the transgender were to register themselves and any transgender seen dressed in female clothing or under suspicion of kidnapping and castrating children, an act of which there was little evidence, were penalised. This ostracization lead to the exclusion of transgender from the social circles and public spaces and now in the present day India, they are found mostly in ghettos involved in prostitution and begging for livelihood with little to no efforts by the government to help them get the human, civil and political rights that they well deserve.

Statement of Problem

The extent of discrimination and ghettoization of transgender can be understood by the fact that since independence up till 2011, there has not been a single census in which transgender were included. The highest transgender were found in Uttar Pradesh and the lowest in Lakshadweep. **The highest literacy rate was founded in Mizoram at 87.6% and the lowest was found in Bihar at 44.35 %.**[9] The total number of transgender were recorded at 487,803 amongst which the number of children were 54,854.The first and the last census that included transgender people was held in 2011. In a first, a family headed by a transgender would be included in the census.[10]

As per the **NHRC Report on the transgender community, 92% of the transgender people do not have access to any economic opportunity** even if they are well qualified for a job. Although as mentioned above, the number of transgender people in India were 4.8 lakhs, it is assumed that the number is far greater than this. But due to lack of acceptability in the society and apprehension of discrimination most transgender do not come out. 99% of the transgender

[9] Census 2011, *Transgender in India*, CENSUS 2011 (Nov, 10, 2020, 3 PM), https://www.census2011.co.in/transgender.php.

[10] Aditi Chattopadhya, *In a first 2021 to recognise Tansgenders as Heads of Households*, THE LOGICAL INDIAN (Jan, 17, 2020, 8:28 PM), https://thelogicalindian.com/news/transgender-census-19349.

in India have faced social discrimination including within their family and 96% are forced to take up menial and underpaying jobs like begging and prostitution.

As we saw in the above section, the socio- economic conditions of the transgender people is appalling. Despite the LGBTQ movement around the world and legal steps taken by the European Union at the International level and the Indian government, the lot of transgender people around the world has not changed much and Kashmir is no exception to this general view. The struggles of transgender community in Kashmir is aggravated by the conflict that overshadows everything in Kashmir. With the abrogation of Art 370 and the hit of pandemic, the socio- economic conditions of transgender community has deteriorated even further (Naqash, 2018). The state of affairs of the transgender community is very grim with no to little social, economic and political representation. However, after judgement of NALSA, a legal discourse has started albeit with opposition from the transgender community. In the state of J&K the case of transgender was represented for the first time in 2018 and the Finance Minister came up with schemes for medical and life insurance for transgender who are above the age of 60 and who are registered with the social welfare department. Within the social context, this order has already garnered a lot of criticism. Even the sparse efforts made by the state to alleviate the conditions of the transgender people of the state of J&K are not attuned to the NALSA judgement and the Transgender Act as there is no representation of the transgender people in the Transgender Welfare Board recently set up by the state of J&K.

3. Literature Review

Urvashi Butalia, in an article named, **'Queer and transwomen are essential to Indian feminism'** gives a glimpse of the apathy of Indian feminism towards the 'trans' issues. The author writes about her personal journey as a feminist in India and how transgender issue has come to gain a place in Indian feminism.[11]

Dhruva Gandhi and **Unnati Ghai**, in India has in this article named**, 'A Constitutional Challenge to the Transgender Persons Act'** critically analysed the Transgender Persons Act, (Protection of Rights) Bill, 2019. The author's main focus is to pin point the aspects of the Transgender Persons Act (Protection of Rights Bill), 2019 that violate the Constitution like discrimination on the basis of sex, chilling effect and invasion of privacy. They give different

[11] Urvashi Butalia, *Queer and transwomen are essential to Indian Feminism*, The Guardian (May, 29, 2017, 17.29), https://www.theguardian.com/lifeandstyle/2017/may/29/indian-transgender-feminism-urvashi-butalia.

reasons and grounds for striking down certain sections of the said Act. It does not however give a detailed account of the socio-legal position of transgender people.[12]

Sayan Bhattacharya in the article, **'The Transgender Nation and its Margin: The Many Lives of the Law'** makes an attempt to understand citizenship and the idea of seeing citizenship through Nationalism. This is the main contention of the author. The author does so by studying the nationalism as understood by the queer group, the Transgender Bill and the last section focuses on the right to work under the Act. This article aims to see the issue of transgender through the prism of the idea of the 'Hindu Nation'. The author tries to ascertain the relationship between acceptance of some groups of transgender community like the 'Hijra community' and the rising Hindu Nation. The author however goes on to defy that the transgender accept the 'Hijra' identity as the only one which is clear by the fact that they reiterate that they aspire for better social and educational opportunities and being in the 'Hijra' community is not the start all and end all of their lives.[13] This paper also points out to the many loopholes in the Transgender Protection Bill which was yet to become an Act at the time of writing of this article. The author tries to give real life examples of the **'real' and 'fake' Hijras and how the issuance of certificate as provided in the Transgender Act makes this issue of real and fake even more prominent exposing the transgender community to more violence amongst themselves.** At last, the author concludes by saying that the National identity is not the only way transgender can be brought into the sphere of social life where they can have access to the rights that are available to other citizens. This article is a wonderful read about the nation, nationality and the issue of transgender within the Nation. But does not cover the aspect of Constitutional equality within the Nation. Although the idea of Nation is a constantly changing depending upon the mainstream politics, the Constitution remains same for the most part of it and that instrument which can give transgender a permanent sense is not covered in this article.

Michelle Goldberg in the writing named, **'What is a woman? The difference between radical feminism and transgenderism'** has attempted to include and discuss various points of radical feminists and transgender to ascertain whether transgender women have any place in feminist discourses or not? And if yes, then to what extent? In this article the author very briefly puts forward the arguments of both the radical feminist in not including transwoman in the

[12] Dhruva Gandhi and Unnati Ghai, *A Constitutional Challenge to the Transgender Persons Act in India*, Blog Of International Journal Of Constitutional Law (Dec 27, 2019), http://www.iconnectblog.com/2019/12/a-constitutional-challenge-to-the-transgender-persons-act-in-india/.

[13] Sayan Bhattacharya, *The Transgender Nation and its Margins: The Many Lives of the Law,* SAMAJ, 20, 2019.

feminist diaspora and the arguments of transwoman in trying to belong.[14] By way of this article the author raises legitimate questions about the problems involved in including transwoman in the feminist movements as well as arguments that tilt more towards transphobia. However, there is no definite conclusion of the discussion. Whether or not the transwomen should be given a place in the feminist movements is left unanswered.[15]

Max Bearak in his article, **"Why 'transgender' don't work for India's 'third gender' communities"** gives a brief about the transgender communities in India and their acceptability as a social group. He goes on to discuss the position of third gender in the Indian civilisation and their role as dignified individuals and group of people. The author further explains how due to the advent of British colonial conquest of India, the ever so accepting third gender were started to be seen as criminals and their activities and even presence criminalised. The author further goes on to state that the idea of gender was so fluid in India that even the Gods used to change gender in a whim.[16] Gender fluidity was a normal and acceptable concept with the pre-British India and third gender was not confined to one homogenous group called 'transgender.' There were different groups within the spectrum of gender that oscillated between male and female which may or may not have identified themselves as transgender as we know today. This article is a small attempt by the author to make the readers aware of the fact that the concept of third gender is a varying concept in the Indian community. This article however is not in any way a deep study into the meaning and various groups of third gender living in India neither does it concern itself with the constitutional position of transgender people.

'Transgender Rights: Historical, Constitutional, Legal Perspective and Critique' by B&B Associates is an attempt to understand the complexity of gender and sex in relation with the rights provided by the constitution. The article proceeds with defining the concept of gender and sex and how they are different from each other. It further illustrates the concept of transgender. The author defines the term transgender as a term used to define people who behave or dress or perceive themselves in a way different from what the society expects from them. The author however, cautions that this term is used as an umbrella term to include different concepts which are not necessarily included in it. This further creates misconception in the deliberation related to gender. Another concept deliberated upon by the author is that of

[14] Michelle Goldberg, *What is a woman? The dispute between radical feminism and Transgederism*, MICHELLE GOLDBERG (July 31. 2015, 7 P.M.), http://www.michellegoldberg.net/thelatest/2014/8/04/what-is-a-woman-the-dispute-between-radical-feminism-and-transgenderism.

[15] *Id.*

[16] Max Bearak, *Why 'transgender' don't work for India's 'third gender' communities*, THE WASHINGTON POST (Oct, 10. 2014), https://www.washingtonpost.com/news/worldviews/wp/2016/04/23/why-terms-like-transgender-dont-work-for-indias-third-gender-communities/.

sexual orientation which can be bisexual, lesbian, gay, pan sexual asexual etc. The author states that these three binaries namely sex, gender and sexual orientation are used sometimes interchangeably which further complexes the gender identity issue. Reference is given towards the mythological characters in Indian context and how gender was more fluid in these historical representations than it is now. This is compared to the Victorian understanding of gender which was strict and with the advent of British in India changed the understanding of gender in India through various legislations like The Criminal Tribes Act, 1871 which criminalised the whole transgender community. The author continues the article by analysing the transgender discourse in the present scenario by way of studying the NALSA judgement wherein the third gender was given a mention for the first time in a judicial pronouncement. The author highlights the irony that it took a judicial pronouncement to establish that transgender have the same rights as other citizens. Further the author criticizes the judgement on its lack of sensitivity for not using the gender appropriate pronouns like them or theirs. But the judgement has been applauded by the author for making it manifest that sex under art 15 and art 16 would include gender identity. Art 19(a) - right to freedom of expression and Art 21- Right to life were also meant to include right to dressing as per one's choice and right to dignified living respectively. Lastly, the author studies the Transgender Bill (Protection of Rights) Act, 2019 and goes on to criticise the same for not adhering to the NALSA judgement in essence and in procedure of identifying a transgender and therefore, providing benefits to them under the Legislation. This article although covers many aspects of the study it is in no way a complete and deep study of the constitutional equality and transgender rights.

'Constitutional feminism- An overview' by **Dr. P. Ishwara Bhat** is an article that throws light on the relationship of feminism and constitutional law. In a very short piece of writing the author has focused and been successful in bringing the reader's attention on understanding how constitutional provisions have been evoked to further woman's interests and to make the rights available to her under the constitution accessible. The author talks about two approaches of interpreting laws and social context in which the laws operate. One is the difference analysis that views gender issues as issues of difference and the other view is the approach which views the gender issues as the dominance issue that is to say that gender related issues are not only because of the difference in the two sexes but one's dominance and subordination of the one by the other as a class.[17] The author goes to give examples by way of various case laws where

[17] P.Ishwara Bhat, *Constitutional Feminism- An Overview*, SCC (Nov, 10, 2020), https://www.supremecourtcases.com/.

constitutional provisions were invoked to give effect to Art 14, Art 21 and Art 15(3) over statutory laws and where these articles were given interpretation as per difference approach and dominance approach. This research paper gives the reader an idea about how constitutional law has furthered the cause of feminism in India. Although a very important piece of writing, this paper caters only to the relationship of constitutional law and feminism and does not cover legal developments that take their hue from the feminist movements.

Transgendering Citizenship written by **Surya Monro** and **Lorna Warren** is an article that focuses on the issue of citizenship of transgender and the various citizenship models that one can follow to study citizenship for transgender people. The authors discuss various models like feminist models, anti-sex models, intimate models and disability models to deal with the issue of citizenship. The author concludes that transgender people need their own citizenship model to cater to their peculiar needs. This article raises a legitimate question that if the rights of the transgender are to be protected they have to be put under a citizenship model for the law to take its course. The article however does not relate the various citizenship models with the problems faced by transgender people and the solutions thereof that do not necessarily need a separate citizenship model.[18]

Problems and Welfare of Transgenders is a reference note by Lok Sabha, New Delhi, India to give an insight on the circumstances in which the transgender people of India are living and the welfare measures, if any at place for their redressal. It was a pilot study taken by the government of India before passing the Act of 2019. [19]

I am not hijra: Transgender Women Claiming Citizenship in South India by Liz Mount gives an insight on how citizenship is an exclusionary idea as transgender women's claims to citizenship come out of the concept of seeing themselves as juxtaposed from the Hijra community, thus suggesting that Hijras are not worthy of getting citizenship because they are illiterate or operate as per the norms of guru and chela (a system which has been criticised by human rights activists), or because they indulge in sex work and begging or dancing on ,marriages and child birth as against the office going transgender woman who identifies as more liberal and places herself essentially out of the Hijra community even if she has some contact with the Hijra community or had such contact in the past.

3.1 Gap in literature

[18] Surya Monro & Lorna Warren, *Transgendering Citizenship*, SEXUALITIES, 7(3), 345-362 (2004).
[19] Lok Sabha Secretariat, Problems and welfare of transgenders, REFERENCE NOTE, http://164.100.47.193/Refinput/New_Reference_Notes/English/final%20Problems%20and%20welfare%20of%20transgeneders.pdf.

The above literature gives us a clear picture of the social and legal position of transgender in almost every society. The vulnerable position the transgender find themselves in and social dejection makes it impossible for the transgender people to get their rights provided to every citizen of the world under various Human Rights Conventions and under the Indian Constitution. It is also evident that there are no policies or laws in place in Kashmir to cater to the issue of providing the transgender community access to rights. Therefore, this research would be aimed at accessing the socio- legal position of the transgender in the valley of Kashmir so that a sample policy can be proposed to alleviate the socio-legal position of transgender people.

4. Rationale for the study

a) The socio- economic conditions of the transgender people is appalling. Despite the LGBTQ movement around the world and legal steps taken by the European Union at the International level and the Indian government, the 'lot' of transgender people around the world has not changed much and Kashmir is no exception to this general view.
b) However, after the judgement of NALSA, a legal discourse has started albeit oppositions from the transgender community. In the state of J&K the case of transgender was represented for the first time in 2018 and the Finance Minister came up with schemes for medical and life insurance for transgender who are above the age of 60 and who are registered with the social welfare department. Within the social arena, this order has already garnered a lot of criticism.
c) Although efforts have been made to study the transgender community, these efforts are sporadic and limited by scope and nature. Thus, this study is an attempt to identify, analyse and concoct solutions for the emancipating the socio-legal position of transgender community.

5. Present study

5.1 Statement of Problem

The recent Transgender Protection of Rights Act, 2019 is a step towards recognition of the transgender community as a part of the socio-legal system of India, a group which was hitherto invisible to the mainstream.

Given below are definitions of some of the words used in this research proposal-

a) Gender- gender has been defined by the FAO as the relations between men and women which can be in terms of perceptual as well as material. As per FAO gender is not a

biological construct but a social construct. It is considered to be that aspect of societies which is central to the functioning of societies. According to Tim Newman, gender can be defined to mean the role of a male or female in a society or an individual's perception of society. WHO says, Gender refers to the socially construed aspects of women and men, like roles and relationships between men and women. The concept of gender varies from one society to another society. [20]

b) Transgender- Tim Newman says when a person's genetic assignment does not confirm with their self- perception of gender. Such individuals identify as transgender, non- binary or gender non- confirming.[21]

c) Sexual orientation- Sexual orientation is described as innate and unchangeable romantic and sexual attraction towards other people.[22]

d) Cisgender- Cisgender is a person who identifies with the gender that is assigned to him or her on birth and expresses himself or herself as such.[23]

e) Pansexual- 'Pan' specifically means all inclusive. Pansexual refers to a person who is sexually attracted to varied genders be it male, female or transgender. Their attraction towards people is more a result of chemistry rather than towards a specific gender.[24]

f) Asexual- Asexual person is one who does not feel sexual attraction towards anyone. [25]

g) Bisexual-Bisexual is a person attracted towards both male and female gender.[26]

h) Feminism-Feminism is a philosophy that aims at levelling the ground for both men and women and provide equal rights to women with different life experiences as their male counterparts.

6. Methodology

The researcher intends to use qualitative and quantitative research methodology for the purpose of collecting data. Qualitative methodology would produce the best results in objective number 3 & 4 as it would help in understanding the concept of transgender, its history and relation with state and law. Being a socio-legal study this research would touch the precincts of other subjects such as social -science, history and politics. Qualitative research methodology would be most appropriate in navigating from one subject area to another since qualitative methods are more

[20] Canadian Institutes of Health Research, *What is Gender? What is sex?* (April, 28, 2020), https://cihr-irsc.gc.ca/e/48642.html.
[21] Jayne Leonard, *What to know about female –to-male surgery* (Oct, 8, 2019), https://www.medicalnewstoday.com/articles/326590.
[22] www.hrc.org
[23] *Id.*
[24] Western Australian AIDS Council
[25] *Id.*
[26] *Id.*

subjective and flexible. A doctrinal approach would be used to study the various legislations and judicial decisions. However, it can be voluminous and unstructured and therefore the researcher has to approach the methodology with rigour and critical reflection of techniques. Moreover empirical study method would be used to collect data from the people of the transgender community to get direct information about their socio-legal position and their ambit of rights in the present legal system which is covered under objective number 1& 2. Comparative Law Method would be used to understand the position of other legal systems and the same can be used to give suggestions as per the Indian context.

7. Objectives

a) To identify the human rights violations of the transgender community in the Kashmir valley within the present socio-legal set up.
b) To identify the barriers and the institutional and structural problems the transgender community faces while asserting their rights.
c) To assess the various legislations and policies at the international and national level.
d) To propose a blueprint for the state government to form policies for the welfare of transgender people.

8. Hypothesis

Despite the legislative efforts made by the government, there is little to no perceptible relationship between the Act passed by the government and the real practical issues faced by the transgender people in Kashmir.

9. Research Questions

Based on the hypothesis, the researcher has come up with the following research questions-

a) Have transgender been considered as a distinct class who deserve special treatment by law like other vulnerable groups our society?
b) Have contemporary religions discriminated transgender because of their different sexual orientation?
c) Have laws relating to transgender failed to bring any perceptible change in their plight in the valley of Kashmir?
d) Has non- implementation of social welfare schemes in the valley of Kashmir made position of transgender more vulnerable?

10. Research methodology

10.1 Sample

Since the issue is a sensitive issue, snowball sampling technique would be most appropriating for interviewing transgender and volunteer sampling technique to collect interview of state officials and other gender binary members of the society.

10.2Data collection

Data collection would involve use of both primary as well as secondary sources to understand the historical as well as the present place of transgender in the socio-legal framework. Content analysis, meta- analysis (To study practical issue arising out of something) and other document review tools would be used for data collection in addition to the use of interview schedules and questionnaires wherever required. The nature of data would be qualitative empirical.

Sampling would be used by the researcher considering the sensitivity of the issue. The sampling tools used would be interview schedule or questionnaire. The empirical data would be collected by way of questionnaire or interview schedule to be filled by the transgender community and in certain instances state officials and other members of the society to understand the problems involved in implementation of rights of transgender people.

(a) Primary data collection

The Universe of study

There are about 4127 transgender people in Kashmir valley as per the census of 2011.

Sample design

Sample design used would be snowball sampling and volunteer or purposive sampling.

Tools

The data can be collected by way of interview schedule and questionnaire and library research.

Software application

SPSS software would be used to analyse the data collected.

(b) Secondary Data collection

The source of collection of doctrinal aspects of the research would be secondary sources like Heinonline, Westlaw and JSTOR. This data can be analysed with the help of softwares like Nvivo.

10.3Data analysis

Data analysis is the last stage of the research wherein the data collected is analysed to answer the research questions and to prove or disprove the hypothesis. In quantitative data, data collection and data analysis are two different stages but in qualitative data, analysis starts as soon as the data is collected. The following are the data analysis techniques that will be used for analysing qualitative data collected in the proposed study-

a) **Content analysis** – Most commonly used data analysis technique is the content analysis. This method or technique is used to analyse data which is in the form of text, media or even physical items.

b) **Narrative analysis-** this method analyses the stories of individuals or groups from interviews or surveys to answer the research questions.

c) **Discourse analysis-** this method is also used in analysing the data collected from interviews but the responses are observed in their respective environment.

d) **Grounded theory-** The grounded theory mostly helps in answering questions like why and how particular event or development happened. It studies similar cases in different environment and seeks to find an explanation that fits all.

Any or all of the above data analysis techniques may be used by the researcher to analyse the collected data depending upon the nature of the data collected and requirement of the research. The empirical data would be analysed by way of software like SPSS and qualitative data by software like Nvivo.

11. Research design

a) ***First chapter*** will be the introductory chapter to put the issue of transgender and their rights in perspective. It will also include the methodology to be adopted by the researcher.

b) ***Second chapter*** relates to the history of transgender and the evolution of the problem that transgender finds themselves in the present times.

c) ***Third chapter*** will analyse the transgender and their position in contemporary religions.

d) ***Fourth Chapter*** deals with the international instruments relating to transgender and practices in different countries.

e) ***Fifth Chapter*** would analyse the Transgender Persons (Protection of Rights) Act, 2011.

f) ***Sixth Chapter*** would deal with the implementation of laws and policies relating to transgender – An empirical analysis. .

g) ***Seventh Chapter*** would analyse the problems that arise in implementing transgender rights, especially vis-a-vis the conflicting interests of transgender and mainstream society.

h) ***Eighth chapter*** would be a summary of all other chapters and an analysis of the conclusions that arise therefrom. It is supposed to be a blue- print of the suggestions for the proper legal framework for implementation of transgender rights in Kashmir.